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Attorneys for defendants
Joseph Dale Wren, Newark Police Department
and Jim Davis

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A. Description of the Case

The City of Newark issued a permit for a bicycle race on June 12, 2004. On that morning, the plaintiff was jogging on the “Eureka Circle Course” (adjacent to Stevenson Blvd., City of Newark) at the same time as the “Master’s 45/55 Fremont Freewheelers Criterium Bicycle Race.” The plaintiff’s presence created three problems: (1) only he was not on a bicycle, (2) he was running in the opposite direction and (3) he was jogging within the area segregated for the bicycle race. [When asked if he “would mind running on the sidewalk, there is a race starting in ten minutes?”, he replied pithily, “yes, I do mind! Fuck off!”]

During the race, he continued running contrary to the bicyclists. He allegedly yelled at one point to the bicyclists as they passed, "Fuck you, Jew" and raised his hand with his middle finger extended. According to witnesses, he extended his right arm as one bicyclist was about

1 to pass him and thus knocked the bicyclist to the ground; that caused a chain reaction, which
 2 injured several other cyclists. The plaintiff later told police that the bicyclist had intentionally
 3 steered toward him and that caused the accident.

4 After the case was referred to the Alameda County Deputies District Attorney Lisa Faria
 5 and Shara Mesic ultimately charged Lopes with criminal battery (Penal code section 242). At
 6 the later trial, an 11-1 hung jury resulted in a mistrial.

7 B. Procedural History

8 1. The First Complaint

9 On June 9, 2006, the plaintiff filed a complaint against Joseph Dale Wren,
 10 Newark Police Department, Newark Police Union (collectively, the “City”), Lisa Faria and
 11 Shara Mesic for 42 U.S.C. §1983 violations; he amended it on June 12 and June 26. Judge
 12 Breyer granted defendants’ Lisa Faria and Shara Mesic motion to dismiss on December 14,
 13 2006. The City’s motion for summary judgment was granted on June 25, 2007.

14 2. The Present Complaint

15 The plaintiff’s present complaint was filed on November 2, 2007 in Alameda
 16 County, for the same 42 U.S.C. §1983 constitutional violations. It was removed to this court in
 17 December 2007. Defendant C.B. Richard Ellis immediately moved to dismiss (based on *res
 18 judicata* and statute of limitations); that motion was granted on March 10, 2008.

19 C. Trial Date/Estimated Length of Trial: N/A (see “H” below).

20 D. Fact Discovery Cutoff: 60 days before trial.

21 E. Date For Designation of Experts and Other Witnesses: 60 days before trial.

22 F. Date For Pretrial Conference: 2 weeks before trial.

23 G. Subject Matter Jurisdiction; Parties Remaining to be Served: Undisputed;
 24 unknown.

25 H. Legal Bases For Defendants’ Defenses:

26 • Probable cause existed for the arrest;

27

1 • All issues were disposed of already by summary judgment in the first
2 lawsuit (i.e., *res judicata*);
3 • All claims are barred by the statute of limitations.

4 I. Legal Issues In Dispute: None known to the City.

5 J. Issues For Dispositive Motions: All legal issues (see "H", above).

6 K. Motions Anticipated By the Parties: The City will move to dismiss based on *res*
7 *judicata* and the statute of limitations. If the motion is denied, then the City will move for summary
8 judgment.

9 L. Relief Sought By Plaintiff; Amount of Damages Claimed: Unknown.

10 M. Discovery Intended: If the City's motion to dismiss is denied, it will conduct
11 depositions.

12 N. Related Cases: C-06-03705-crb

13 O. Class Action: N/A

14 P. Earliest Reasonable Dates For Discovery Cutoff, Pretrial Conference and Trial:
15 See "D," "E" and "F" above.

16 Q. Prospects for Settlement: None.

17 R. Meet and Confer Attempts: Unable to reach the plaintiff, the City alone submits
18 this case management order.

19 Date: March 27, 2008

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20 /s/
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FURAH Z. FARUQUI
23 Attorney for defendants Joseph Dale Wren, Newark
24 Police Department and Jim Davis
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PROOF OF SERVICE

I declare that:

I am employed in the County of Contra Costa. On March 27, 2008, I served the following document(s):

DEFENDANT'S CASE MANAGEMENT STATEMENT

____ (by mail) on all parties in said action, in accordance with California Code of Civil Procedure §1013a(3) by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Gary M. Lepper, mail is placed in that designated area, is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in the United States mailbox in the City of Walnut Creek, California.

____ **(by fax transmission)** on all parties by transmitting said document(s) from our office facsimile machine (925) 943-6190 to facsimile machine number(s) shown below. Following transmission, I received a "transmission report" from our fax machine indicating that the transmission had been transmitted without error.

XX (by electronic service) I caused such document(s) to be electronically served through the Lexis-Nexis e-filing system for the above-entitled case to the parties on the Service List maintained on LexisNexis' website for this case. The file transmission was reported as complete and a copy of the LexisNexis service receipt will be maintained with the original document(s) in our office. My electronic business address is ghooke@lepperlaw.com.

Cornelius Lopes 6251 Quartz Place Newark, CA 94560	Plaintiff
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I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct, and that this declaration was executed on March 27, 2008, at Walnut Creek, California.

Gwynne Hooke